

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 160/AIL/Lab./J/2011, dated 23rd August 2011)

NOTIFICATION

Whereas, the Award in I.D.No.6/2004, dated 29-3-2011 of the Labour Court, Puducherry in respect of the industrial dispute raised by Honda Power Products Pattali Labour Union, Puducherry against the management of M/s. Honda Siel Power Products Limited, Puducherry over non-employment of S. Anantha Kesavan has been received:

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Tuesday, the 29th day of March 2011

I. D. No. 6/2004

The President/Secretary,
Honda Power Products
Thozhilalargal Sangam (CITU),
(Regd. No. 1302/RTU/2002)
Plot Nos. B-16, 30 and 31,
Sedarapet, Pondicherry-605 111. . . Petitioner

Versus

The General Manager,
Honda Seil Power Products Limited,
Plot Nos. B-16, 30 and 31,
Sedarapet, Pondicherry-605 111. . . Respondent

(Petition amended as per order in I.A. No.51/2008,
dated 8-7-2009)

This petition coming before me for final hearing on 28-3-2011 in the presence of M/s. Vrintha Mohan, advocate for the petitioner, Thiruvallargal K. Babu and

C. Arivajagane, advocate for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 173/2003/Lab./AIL/J, dated 22-12-2003 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.*,

- (1) Whether the non-employment of Thiru S. Anantha Kesavan is justified or not?
- (2) To what remedy he is entitled to?
- (3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement would aver that the petitioner union is a registered trade union in No. 1302/RTU/2002 and having its office at the respondent industry for the cause of upliftment of the employees of the respondent's company. One S. Anantha Kesavan who is an I.T.I. Diploma Holder coupled with Act Apprentice, has joined in the respondent company on 8-12-2000 after completion of screening test short-listing an interview, as casual employee. It was the *modus operandi* of the respondent to absorb permanent workmen in the style and caption of "casual employee". To substantiate the factum that the said S. Anantha Kesavan was placed with the respondent's unit, the E.S.I card, dated 8-12-2000 is filed herein as document No. 1. The said Anantha Kesavan was issued with training order in No. HSPPL/W/PDY/OO/PER/2001, dated 13-6-2001 for the period of one year.

It is the *modus operandi* of the respondent management herein to fancifully appoint and designate any workmen after thorough process of interview only as casual labourer for the namesake but in reality they were placed on par with the permanent workmen on the aspects of job responsibilities and duties and extraction of work therefrom with a meager and minimal pay. The petitioner submits not content with their malicious attitude in suppressing the legitimate trade union activities of this petitioner's by way of fanciful, perfunctory and slipshod termination of the workmen, who are members of trade union. With baseless and bald stores as against the President of the petitioner's trade union, the respondent terminated the service of the President. On 29-7-2002, a letter was issued by the respondent management to the said Anantha Kesavan stating that his performance is poor and thereby extended the training unilaterally for a period of 3 months from 3-6-2002. On 8-9-2002 an appointment order was given to the said Anantha Kesavan by

appointing him as Operator. Further, on 27-12-2002, a termination order was issued to S. Anantha Kesavan with false allegations. It is pertinent to note that prior to termination of any workmen, the management should issue show cause notice assigning reasons with the surrounding facts and circumstances, a reasonable opportunity should be given to the delinquent workmen and if not satisfied with the reasons assigned by the workmen, a domestic enquiry has to be conducted with equal opportunities for both the employer and the employee presided by an independent Enquiry Officer. But in this case, none of the above principles of labour law was invoked on the side of the respondent.

The said Anantha Kesavan is a sincere, hard working and efficient operator and he had discharged his duties and responsibilities to the utmost satisfaction of the employer, co-employees and superiors and he had never committed any offence. He had submitted a written submission on 30-12-2002 by way of reply for the illegal termination. The cheque furnished alongwith the full and final settlement by the respondent to the said Anantha Kesavan was returned back to the respondent. He had also sent a reminder on 12-1-2003 for his written submission given on 30-12-2002. Once against, the respondent management sent a letter instructing the petitioner to receive the cheque for ₹ 4,496 towards full and final settlement towards the services of the said S. Anantha Kesavan. He has initiated an industrial dispute for the injustice caused to him with the Labour Officer (Conciliation), through the petitioner herein. The cheque sent by the respondent to the said S. Anantha Kesavan was sent back to the Manager of the respondent's unit by way of letter, dated 21-1-2003.

The respondent management has given bald reply on 28-1-2003 with the Labour Officer (Conciliation) by stating that as per clauses 7 and 8 of the order of the management, dated 8-9-2002, they possess right to terminate the services of the workmen without notice. A detailed counter, dated 24-3-2003 was filed by the petitioner to reply of the respondent, dated 28-1-2003.

On 22-5-2003, the respondent management had took up the allegations against the said Anantha Kesavan for the first time, after six months of termination. The allegation framed against Anantha Kesavan is that he insisted the co-workers to slow down the production. The Department of Labour felt that the petitioner herein possess a justifiable case and that the same was put down by the respondent irreasonably, the Labour Department took up the matter for higher level conciliation and intimated the same *vide* letter, dated 26-6-2003. In spite of persuasions made by the Deputy Labour Commissioner, the respondent firmly stuck to their false explanations and filed a reply

dated 24-7-2003. On 10-9-2003, the petitioner union given a detailed reply to the Deputy Labour Commissioner with regard to unfair trade practice and intimidations thwarted by the respondents and its men. A police complaint was also lodged with the Station House Officer, D' Nagar on 3-9-2003 in this regard. The arbitrary and unilateral attitude and actions of the respondent is illegally and unjustifiably terminating the said S. Anantha Kesavan in gross and flagrant violation of all laws and intent of the legislature besides violating the central model standing orders needs intervention of this court. Hence, the petitioner prays to (1) Direct the respondent herein to reinstate the said S. Anantha Kesavan, Operator of M/s. Honda Seil Power Products Limited. Plot Nos. B-16, 30 and 31, Sedarapet, Pondicherry-605 111, who was terminated on 27-12-2002, (2) to direct the respondent to pay to S. Anantha Kesavan all the wages, allowances and all other benefits accrued thereof from 27-12-2002 besides payment of a sum of ₹ 1 lakh towards compensation for the mental agony, humiliation and physical strain caused by the respondent's company to S. Anantha Kesavan.

3. The respondent filed a common counter statement and contended that the petition is not maintainable either on law or on facts. As per section 2(k) of the Industrial Disputes Act, 1947, it would necessarily follow that the parties to the dispute should have a direct or substantial interest. As the claim relates to persons should be considerable or substantial in number. As the claim relates to non-employment of an individual workman there is no community of interest or substantial interest and therefore there cannot be a dispute under section 2(k) of Industrial Disputes Act as contemplated therein. The mere fact that petitioner union is a registered trade union under the Trade Union Act, 1926, is not a conclusive proof of its real existence or authority to represent the workmen in the reference before the authority. Under such circumstances, the respondent prays to take up this issue as preliminary issue among other issues and decide the same at the first instances.

The respondent factory unit Pondicherry was established and started its commercial production in September 1995 and manufactures various models of internal combustion engine based generators, general purpose engines and water pumps. There are trade apprentices for power products industry and these individuals were taken as trainees to examine their suitability to learn and assimilate the highly skilled process of manufacture of power products. As a policy in all the factories, only raw hands are recruited and train them on the job. The selected candidate were placed on training for a period of one and thereafter they were placed on probation for a period of one year. As stated above, Shri S. Anantha Kesavan was engaged as a

casual employee on 8-12-2000 and thereafter he was absorbed as trainee with effect from 13-6-2001 for traineeship for a period of one year and terms and conditions of which were accepted by him. After the said period, a technical written test which was conducted for the purpose of considering him for probation was very poor and due to his poor performance, the training period was further extended for further three months. As an organisation, they were not bound to place him on probation, where his performance as trainee was adjudged as inadequate and could have terminated him as per clause 4 of traineeship order, dated 13-6-2001. However, in spite of his poor performance, an another opportunity was given to said Anantha Kesavan by offering him as a probationer for a period of 12 months from 8-9-2002. During the said period, the performance of S. Anantha Kesavan was very poor and had not shown any improvement. Apart from that the said Anantha Kesavan had involved in the acts of threatening and instigating his co-operators to slow down line, for which the respondent management had received a written complaint from a workman Shri K. Sundararajan on 19-12-2002. As there was no change or improvement in his attitude, the respondent management was constrained to terminate his probation *vide* letter, dated 27-12-2002. This is a case of termination of a probationer governed by the terms and conditions of the appointment order and as such the petitioner's claim of alleged non-employment of Anantha Kesavan does not arise and is devoid of merits.

The respondent denies all the averments narrated in the petition. With regard to paragraph 18 to 23, the real facts were disclosed to the Labour Officer (Conciliation), Pondicherry *vide* letter, dated 28-1-2003. Thereafter, since the Labour Officer (Conciliation), Pondicherry insisted for a letter in writing that the respondent management will not take back the said probationer, again the respondent management was constrained to give a detailed reply, dated 22-5-2003. Thereafter, the Labour Officer (Conciliation) issued failure notice, dated 10-6-2003. Later, on the approach of the petitioner, the Labour Commissioner had taken up the issue by reporting it for higher conciliation and there also the respondent had given appropriate reply and had also filed the complaint letters received against the said Shri Anantha Kesavan and had proved the acts of the said Shri Anantha Kesavan by way of evidence and had justified its action, upon which the Commissioner of Labour was satisfied and had closed the file. Hence, there was no failure report from the Commissioner of Labour-cum-Chief Conciliation Officer as required under section 12(4) of the Industrial Disputes Act. Hence, the present reference itself is not maintainable as the matter had been duly closed by the Commissioner of Labour-cum-Chief Conciliation Officer. Hence, this issue also be taken up as a preliminary issue and may please be decided at the first instance.

It is further submitted by the respondent management that the petitioner union is not authorised by Shri S. Anantha Kesavan to pursue the case on his behalf and he has not filed any single application or affidavit before this court narrating the facts or justifying his claim. Hence, on this score also the claim made by the petitioner union is liable to be rejected.

4. In the additional counter statement filed by respondent management, it is averred that the alleged Honda Power Products Pattali Labour Union is not in existence. As such pursuing the dispute in the name of such non-existing union does not have any validity. Hence, this issue is also taken up as preliminary issue among other issues and decide the same at the first instance. The respondent further submits that the petitioner and Shri S. Anantha Kesavan has no *locus standi* to seek reinstatement, back wages and continuity of service or any other benefits, hence, the respondent prays for dismissal of this petition.

5. *Now the point for determination is:*

“Whether the petitioner is entitled for the relief sought for?”

On this point:

6. The case of the petitioner is that the respondent management having extracted work from them as casual worker continuously on par with regular workers, took a plea as though the petitioners were trainees and abruptly made the petitioner to face non-employment. The learned counsel for the petitioner relied upon the following decision:—

LLJ 1999-Vol. 1054-1068

Termination – Of probationer's service – To be treated as founded an allegations if findings were arrived at in enquiry behind back of employee or even without instrumental enquiry – It is to be treated as bad, if enquiry was not held, no findings arrival at, and complainant against employee operating only as motive for employee not to continue employee's service.

7. *Per contra* the respondent would state that the petitioner had taken voluntary training under the respondent without any promise for regular employment in the respondent company and also the petitioner evinced lack of efficiency during training period and by way of an afterthought they have chosen to raise this industrial dispute.

8. The case of the petitioner is that he joined in the respondent company as Operator with I.T.I. qualification on 8-12-2000 and after completion of screening test shortlisting and an interview, he was styled as “Casual Employee”, but he was engaged in the employment of the already existing permanent vacancy

which involves work of machine operating and the process of manufacturing of portable generators, internal combustion engines and water pumping sets, the employment of which are permanent and perennial in nature. The petitioner further stated that he enrolled himself as a member of the trade union and involved in the trade union activities and hence the respondent management with malice issued a letter, dated 29-7-2002 stating that his performance is poor and thereby extended the training unilaterally for a period of three months with effect from 3-6-2002 and subsequently he was given order on 8-9-2002 designating him as Operator and then he was issued with a termination order, dated 27-12-2002 stating that his performance is not up to the mark.

9. On the side of the petitioner, the identity card issued by E.S.I. Corporation was marked as Ex.P1, the appointment order issued to the petitioner designated him as trainee as Ex.P2, order regarding extension of training period for three months with effect from 8-6-2002 as Ex.P3, order issued to the petitioner designating him as Operator as Ex.P4 and the termination order, dated 27-12-2002 issued to the petitioner as Ex.P5.

10. The respondent has stated that the petitioner was engaged only as a casual employee on temporary basis in the respondent organisation with effect from 8-12-2000 under Ex.R34 and thereafter he was considered and absorbed as a trainee with effect from 13-6-2001 under Ex.R1 and as per Ex.R1, the training period is one year. He further added that after the said period, since the petitioner's performance in the technical written test under Ex.R10 was very poor, his training period was extended for another three months with effect from 8-6-2002 under Ex.R9 and since the petitioner had not shown any interest in learning the job and its skill, the respondent management was constrained to terminate his probation *vide* letter, dated 27-12-2002 under Ex.R16.

11. In the offer of appointment under Ex.R1, the petitioner's application is referred to. One important fact that should be taken into consideration is that the respondent management itself candidly admitted in their counter that the petitioner was already working in the respondent company as casual labour from 8-12-2000. It is therefore amply clear that the petitioner was working in the respondent company prior to him having been labelled as trainee unilaterally under the respondent factory.

12. The next question arises as to whether the respondent management in such an eventuality was justified in appointing the casual labours within the meaning of section 25-B to take training. The answer is obvious. The respondent was not justified in treating

him as mere trainee subsequently and after two years terminating him from the service without any notice. In such a case, the petitioner is right in describing the conduct of the management as one against the principles of natural justice.

13. The learned counsel for the respondent argued owing to inefficiency of the petitioner, he was terminated from the service. Such an argument cannot be countenanced for the reason that the said workman could not be treated as trainee and as the petitioner had worked for more than 240 days and termination of his service being contrary to the provisions of section 25-F of Industrial Disputes Act is bad. The learned counsel for the respondent would argue that the respondent management cannot be forced to select inefficient workers. Here, the point is that the respondent management already extracted work from the petitioner as casual worker and then as trainee and in such a case, unilaterally, the respondent management cannot label him as inefficient person and make him to face non-employment.

14. The learned counsel for the respondent would argue that during the period of training and probation, the management was not satisfied with the conduct, behaviour and performance and hence the services of the petitioner were terminated and pointed out the following decisions:—

2002 II LLJ 813(S.C)

Termination of service - Petitioners service terminated during probationary period of unsatisfactory service - petitioner termination penal in nature - Show cause notice issued but not fullfledged enquiry held - Held, more ordering does not make termination penal or stigmatic.

2002 I LLJ 690 (S.C)

Termination of service - Test to determine whether in substances order of termination is punitive is to see whether prior to termination there was (a) full scale formal enquiry, (b) into allegations involving moral turpitude or misconduct (c) culminated in finding of guilt; Presence of all three factors would make order of termination punitive irrespective of form of termination order - Absence of any one of three factors would conversely disclose that termination is innocuous.

2001 I LLJ 1346 (S.C.)

Industrial Disputes Act, 1947 - Sections 2(o)(bb) and 25-F - Terms of employment stipulating right to terminate training without assigning reason - Termination of service before enquiry of probation period - In such circumstances issue of notice before terminating service, held, did not arise.

1998 I LLJ 1074 (S.C.)

Termination of Service - Assessment made by employer of performance of employee supported by some material and not *mala fide* - Not proper for High Court to interfere and substitute its satisfaction to that of employer.

2000 II LLJ 779 (H.P.)

Industrial Disputes Act, 1947 - Section 10(i) - Termination of service - During probation period - On account of unsatisfactory service - Held in facts and circumstances of case termination order not punitive in nature - Not vitiated by *mala fide* or for non-compliance of principles of natural justice - Labour Court wrong in holding termination order punitive in nature attaching stigma to respondent.

2002 I LLJ 329 (Kant- DB)

Industrial Disputes Act, 1947 - Sections 10(4-A) - Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982 - Regulation 11(3) - Interpretation which has effect of legislating impermissible in law - Conductor of Corporation removed from service during probationary period on ground of unsuitability - Raised industrial dispute under section 10(4-A) Labour Court ordered reinstatement - Single Judge of High Court upheld Labour Court's award on ground of holding enquiry before dismissal - Aggrieved corporation filed this writ appeal - Held order of single judge upholding award of Labour Court cannot be sustained.

2002 II LLJ 29 (Kant-DB)

Probation - Termination of service during period of probation - held proper.

2001 II LLJ 44 (Raj)

Probation - termination during probation - Petitioner probationer had no right over post during probation period.

2005 LAB I.C. 4215

Constitution of India, Art 311(2) - Termination of service - *Simpliciter* or punitive - Clearly indicated in letter of appointment that services of employee being on contractual basis could be terminated at any time without assigning any reason with 24 hours notice from either side - Reference was made to alleged misconduct of employee in order - Misconduct referred to, was motive and not foundation - It is case of termination *simpliciter* - Does not involve civil consequences - Principles of natural justice not required to be complied with.

2004 STPL (LE) 34023 SC

Constitution of India, Articles 311, 309, Punjab Police Rules (1934), 12.21 - Disciplinary Enquiry - Police Constable - Discharge from service - Thus, the order of discharge *simpliciter*, *prima facie*, is not punitive, it being in terms of Punjab Police Rule 12.21 but the question still is whether the incident which led to the passing of that order was motive or inducing factor or was the foundation of order of discharge.

2006 STPL (LE) 36648 SC

Probationer - Dispensing with services - Whether order stigmatic - By a letter he was informed that his services were unsatisfactory in all areas of drive, initiative, promptness and leadership - Despite being advised verbally and through letters, he had shown no improvement - Services found unsatisfactory and he was not suitable for confirmation - Letter was not punitive in nature and stated, albeit in prolix fashion that service was found unsatisfactory - A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, does not *ipso facto* become stigmatic.

2010 LLR 127 (Madras)

Probationer - Termination of - Challenged by the workman - Labour Court set aside the termination - Writ petition challenging the order of Labour Court, dated 10-1-2001 - Petition allowed by High Court holding : An employee appointed as a probationer can be terminated or dispensed with during or at the end of period of probation because such appointee does not acquire any right to hold or to continue to hold such a post during the period of such a probation - order of Labour Court set aside - Writ petition allowed.

2009 STPL (LE) 42235 SC

Industrial Disputes Act, 1947, Sections 25F, 25B - Continuous service - Burden of proof - Initial burden of proof held to be on workman to show that he had completed 240 days of service - Approach of division bench that the burden is on the employer held to be erroneous.

1962 II LLJ 93 (Madras)

Industrial Disputes Act, Sections 2(k), 2(s) and 10 - Industrial Dispute - Industrial Dispute - When assumes the characteristics of an "industrial dispute" within the meaning of section 2(k) of the Act - An individual dispute espoused by a union having an appreciable number of workmen in the establishment as its members - No evidence adduced to show that such workmen participated in or acted together and

arrived at an understanding, either by a resolution or by other means and collectively supported on the date of reference the demand or cause of the industrial dispute - The fact that the union having an appreciable number of workmen in the establishment as its members had taken up the dispute - In the circumstances, if sufficient to convert the individual dispute into a collective dispute.

1965 1 LLJ 95 (Madras)

Industrial Disputes Act, Sections 2(k) and 10 - Individual dispute, when industrial dispute - Dispute of an individual worker taken up and referred for adjudication at the instance of general union of which some of the fellow workmen in the establishment were members - Labour Court not considering the question as to how many of the fellow workmen who were members of such union espoused the cause of the individual workmen by participating in the resolution of the union - The management raising the plea in their plea in their pleading before the Labour Court that the dispute was an individual dispute - The award of the Labour Court, in the circumstances, quashed.

2010 LLR 403 (Allahabad)

Industrial Disputes Act, 1947 - Representation of workmen by respondent union before the Industrial Tribunal - In a dispute raised by workmen - Petitioner (employer) had taken preliminary objection that respondent No. 2 union has no membership from amongst its workers hence it cannot represent those workers in the dispute - Objection rejected by the Industrial Tribunal - Employer filed writ petition - High Court allowed the petition with observations that - in spite of failure of respondent No.2 union to produce its records for about 10 years - The Tribunal cannot, without recording reasons, allow respondent No. 2 union to continue to represent those workers - Respondent No.2 is not competent to espouse the cause of these workers.

15. In order to prove his claim, the respondent has marked Ex.R12 to Ex.R15, the letters written by one G. Ravikumar, T.G. Sankararamakrishnan, K. Sundararajan and Vijayganesh to the respondent management respectively. In those documents it was stated that the petitioner had instructed the other workmen to slow down the production. Out of said four persons, Sankararamakrishnan and Vijayganesh was examined as RW.1 and RW2. respectively on the side of respondent. RW.1 and RW.2 in their evidence have stated that the petitioner instigated the other employees to slow down the production and they had not heeded to their advice. During the course of cross-examination, they have admitted that they have not given the complaint to the

respondent management on the same date of incident and based on their complaint, no show cause notice was issued to the petitioner by the management. He further admitted that no domestic enquiry was conducted against the petitioner for the said incident. If really, the said incident had occurred, as stated by the respondent, they would have taken action against the petitioner. But as admitted by the respondent, no action has been taken against the petitioner. Further to corroborate the evidence of RWs.1 and 2, the other employees, who have given complaint against the petitioner, have not been examined as witnesses before this court. The foundation of the order of termination was on the complaints alleged to have been made against the petitioner by the said employees of the respondent company and therefore before the order of termination could be passed, the opportunity to defend himself ought to have been afforded to the petitioner by the employer and since it was not done, the order is bad in law. Further Ex.R12 to Ex.R15 do not reveal anything in respect of the aspect of inefficiency on the part of the petitioner as alleged in the counter, but they related to the complaint against the petitioner that he instructed them to do the job slowly. Whatever it may be, it is the principle of law to hold enquiry and after giving due opportunity to the charged employee, the action has to be taken. In this case, it has not been done.

16. The learned counsel for the petitioner has argued that the action of the respondent management in terminating the services of the petitioner without issuing any charge sheet or conducting domestic enquiry is invalid and against the principles of natural justice. At this juncture, the following decisions are very relevant to this point:—

1982 1 LLJ 33 S.C.

Mr. Justice V.D. Tulzapurkar, Mr. Justice Baharur Islam and Mr. Justice A. Varadarajan:—

Workmen of M/s. Williamson Maqor and Company Limited Vs. William Magor and Company Limited and Another:—

“In industrial law, interpreted and applied in the perspective of Part-IV of the Constitution, the benefit of reasonable doubt, on law and facts, if there be such doubt must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without overstepping the proved facts.”

2005(3) L.L.N. 719:-

Sri Markandey Katju, Chief Justice and Justice Sri F.M. Ibrahim Kalifulla:—

National Small Industries Corporation Limited, Chennai Vs. Presiding Officer, I Additional Labour Court, Madras and Another:—

“The whole approach of industrial law is that the employer and employee do not stand on an equal bargaining position. Industrial law recognises that the workers are in a weaker position than the employers who have financial resources, management skills, connections *etc.*, Hence, the whole object of industrial law is to help the weaker section in the society (the workmen) and give them protection from exploitation. There can be no estoppel against a person who accepts his designation as an apprentice, but later on raises a plea that in fact he was not an apprentice but was doing the work of a workman.”

17. The learned counsel for the respondent would further argue that the termination order passed upon a probationer without any formal departmental enquiry or without any preliminary fact finding enquiry is not illegal and relied upon the following citations:—

2002 II LLJ Page 813 (Supreme Court)

Shailaja Shivajirao Patil Vs. President Honourable Khasdar UGS Sanstha and Others:—

Service terminated during probationary period for unsatisfactory service - Show cause notice issued but no full fledged enquiry held - Held, mere ordering of enquiry does not make termination penal or stigmatic.

AIR 2005 S.C. Page 2960:—

State of Punjab and Others Vs. Sukhwinder Singh:

“Probationer - Termination of service - Ground of absence from duty - Order passed without any formal departmental inquiry or any preliminary fact finding inquiry - Not illegal.”

2005 STPL (LE) 34919 SC:

Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain:

Probationer - Termination simpliciter - Whether inquiry necessary - Respondent was appointed on probation and the services were terminated during the period of probation simpliciter as the same were not found to be satisfactory - Held that the appellant corporation is not obliged to hold an enquiry before terminating the services.”

AIR 2005 Supreme Court 2960

Police Act (5 of 1961), S. 7 - Punjab Police Rules (1934) Rr. 12, 21, 16, 24 (ix) - Probationer - Termination of service - ground of, absence from duty - Order passed without any formal departmental inquiry or any preliminary fact-finding inquiry - not illegal.

2005 STPL (LE) 34919 SC

Probationer - Termination simpliciter - Whether the inquiry necessary - Respondent was appointed on probation and the services were terminated during the period of probation simpliciter as the same were not found to be satisfactory - Held that the appellant-Corporation is not obliged to hold an enquiry before terminating the services.

18. As per Ex.P2, the respondent company offered training to the petitioner on 13-6-2001 and as per Ex.P4, the said workman was appointed as Operator on 8-9-2002. Further as admitted by both parties, before 13-6-2001 in which date the petitioner was given training by the respondent management, he was working as casual labour from 8-12-2000. Hence, the petitioner workman was working in the respondent company for more than 2½ years without any interruption. Hence, it was necessary to have given opportunity to the workman before coming to the conclusion that he was not found suitable or fit for being continued in service.

19. It is well settled law that right to life enshrined under Article 21 of Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee workman fair play requires that a reasonable opportunity to put forth his case is given and the domestic enquiry conducted complying with the principles of natural justice. In *D.T.C. Vs. D.T.C. Mazdoor Congress (supra)* the Constitution Bench, per majority held that termination of the service of a workman giving one month's notice or pay *in lieu* thereof without enquiry offended Article 14. Neither no such opportunity was given to the petitioner workman, nor principles of natural justice have been complied with. Therefore, the termination of service of the workman was bad. The decisions cited by the learned counsel for the respondent are not applicable to the present facts and circumstances of the case. Accordingly, this point is answered.

20. In the result, the industrial dispute is allowed and the award is passed to the effect that the non-employment of the petitioner and his dismissal from service is unjustified and is illegal and therefore it is hereby set aside. The respondent company/management shall reinstate the petitioner with continuity of service and full back wages and other attendant benefits as applicable to him as per labour laws. However in the circumstances of the case, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 29th day of March 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

List of witnesses examined for the petitioner :

PW.1 — 3-12-2009 S. Anantha Kesavan

List of witnesses examined for the respondent :

R.W.1— 22-7-2010 T.G. Sankararamakrishnan

R.W.2— 22-7-2010 R.C. Vijayaganesh

List of exhibits marked for the petitioner:

Ex.P1 — 8-12-2000 E.S.I. card of S. Anantha Kesavan.

Ex.P2 — 13-6-2001 Order of training issued to S. Anantha Kesavan.

Ex.P3 — 29-7-2002 Training extension letter issued to S. Anantha Kesavan.

Ex.P4 — 8-9-2002 Appointment order issued by the respondent to S. Anantha Kesavan.

Ex.P5 — 27-12-2002 Termination order and full and final satisfaction letter issued by the respondent to S. Anantha Kesavan.

Ex.P6 — 30-12-2002 Representation given by S. Anantha Kesavan to the respondent for reinstate.

Ex.P7 — 12-1-2003 Reminder letter given by S. Anantha Kesavan to the respondent for reinstate.

Ex.P8 — 14-1-2003 Letter given by the respondent to S. Anantha Kesavan.

Ex.P9 — 14-1-2003 Letter given by the petitioner to Labour Officer (Conciliation).

Ex.P10 — 21-1-2003 Letter by petitioner to the respondent S. Anantha Kesavan.

Ex.P11 — 28-1-2003 Statement of respondent to Labour Officer Conciliation.

Ex.P12 — 24-3-2003 Requiring letter by petitioner to Labour Officer Conciliation.

Ex.P13 — 22-5-2003 Second statement of respondent to Labour Officer Conciliation.

Ex.P14 — 10-6-2003 Conciliation failure report of Labour Officer Conciliation.

Ex.P15 — 26-6-2003 Notice to petitioner by Deputy Labour Commission for higher legal conciliation.

Ex.P16 — 24-7-2003 Statement of respondent to Deputy Labour Commission.

Ex.P17 — 10-9-2003 Letter by petitioner to Deputy Labour Commission.

Ex.P18 — 3-9-2003 Complaint given by the members of petitioner's trade union to Station House Officer, D'Nagar.

Ex.P19 — 22-12-2003 Conciliation failure report of Deputy Labour Commissioner.

List of exhibits marked for the respondent :

Ex.R1 — 13-6-2001 Copy of training order issued by the respondent to S. Anantha Kesavan.

Ex.R2 — 7-6-2001 Haemogram report of S. Anantha Kesavan.

Ex.R3 — 7-6-2001 Bio-chemistry report of S. Anantha Kesavan.

Ex.R4 — 7-6-2001 Clinical report of S. Anantha Kesavan.

Ex.R5 — 6-6-2001 X - ray report of S. Anantha Kesavan.

Ex.R6 — 6-6-2001 E C G with report of S. Anantha Kesavan.

Ex.R7 — 7-6-2001 Pre-employment Medical check up report of S. Anantha Kesavan.

Ex.R8 — 11-12-2001 Letter given by S. Anantha Kesavan.

Ex.R9 — 29-7-2001 Copy of Extension of training letter issued by the respondent to S. Anantha Kesavan.

Ex.R10 — — Performance test for trainee sheets of S. Anantha Kesavan.

Ex.R11 — 8-9-2002 Copy of probationer order issued to S. Anantha Kesavan.

Ex.R12 — 3-10-2002 Letter given by G. Ravikumar.

Ex.R13 — 3-10-2002 Letter given by T.G. Sankararamakrishnan.

Ex.R14 — 19-12-2002 Letter given by K. Sundararajan.

Ex.R15 — 19-12-2002 Letter given by Vijayaganesh

Ex.R16 — 27-12-2002 Letter of termination given to S. Anantha Kesavan.

Ex.R17 — 28-12-2002 Acknowledgment card duly signed by S. Anantha Kesavan.

Ex.R18 — 30-12-2002 Letter given by S. Anantha Kesavan.

Ex.R19 — 14-1-2003 Copy of full and final settlement letter with cheque issued to S. Anantha Kesavan.

Ex.R20 — 20-1-2003 Acknowledgment card duly signed by S. Anantha Kesavan.

Ex.R21 — 14-1-2003 Copy of letter given by the petitioner union to Labour Officer (Conciliation).

Ex.R22 — 20-1-2003 Notice of remarks issued by Labour Officer (Conciliation).

Ex.R23 — 21-1-2003 Letter given by S. Anantha Kesavan to the respondent management.

Ex.R24 — 28-1-2003 Letter given by respondent to Labour Officer (Conciliation).

Ex.R25 — 18-2-2003 Notice by Labour Officer (Conciliation).

Ex.R26 — 24-3-2003 Copy of letter given by the petitioner union to the Labour Officer (Conciliation).

Ex.R27 — 22-5-2003 Copy of letter given by the respondent to Conciliation Officer.

Ex.R28 — 10-6-2003 Conciliation failure report issued by Conciliation Officer.

Ex.R29 — 24-7-2003 Copy of letter given by the respondent to Deputy Labour Commissioner-cum-Conciliation Officer.

Ex.R30 — 3-11-2003 Notice issued by Deputy Labour Commissioner-cum-Conciliation Officer.

Ex.R31 — 6-11-2003 Copy of deposition given by Shri Vijayaganesh to Deputy Labour Commissioner-cum-Conciliation Officer.

Ex.R32 — 6-11-2003 Copy of deposition given by Shri Sankararamakrsihnan to Deputy Labour Commissioner-cum-Conciliation Officer.

Ex.R33 — 22-12-2003 Notification issued by Joint Secretary to Government (Labour).

Ex.R34 — — Bio-data of Shri S. Anantha Kesavan.

Ex.R35 — 25-11-2000 Copy of interview call letter for temporary engagement issued by respondent to Shri S. Anantha Kesavan.

Ex.R36 — 10-2-2001 Copy of provisional national trade certificate of Shri S. Anantha Kesavan.

Ex.R37 — 23-9-2004 Copy of 12(3) settlement entered between the petitioner union and the respondent management before the Labour Officer (Conciliation).

Ex.R38 — 22-2-2005 Copy of minutes of meeting held between the Honda Power Products Thozhilalargal Sangam and the respondent management.

Ex.R39 — 23-2-2005 Copy of 12(3) settlement entered between the petitioner union and the respondent management before the Deputy Commissioner-cum-Conciliation Officer.

Ex.R40 — 22-3-2005 Copy of joint memo. filed in I.D. No.3/2004 before the Industrial Tribunal, Puducherry.

Ex.R41 — 14-12-2004 Photocopy of letter given by Pudukai Manila Pattali Thozhilalar Sangam issued to the respondent management.

Ex.R42 — 24-12-2004 Photocopy of letter given by Honda Power Products Thozhilalargal Sangam issued to the respondent management.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

GOVERNMENT OF PUDUCHERRY
CHIEF SECRETARIAT (HEALTH)

(G. O. Ms. No. 42, dated 18th August 2011)

NOTIFICATION

In pursuance of the recommendations of the Ministry of Health and Family Welfare, Government of India, the Government is pleased to set up a committee on "Rapid Response Team" for polio eradication at State and District level with the following officials in this Union territory of Puducherry for eradication of polio and interaction with the India Expert Advisory Group on polio eradication set up by Government of India.

Puducherry State and District:

- | | |
|-----------------------|-------------------|
| 1. Secretary (Health) | .. Chairman |
| 2. Director (Health) | .. Vice-Chairman. |